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ENTERED AND  
SERVED

FEB 20 1998

CLERK, U.S. DISTRICT COURT  
DISTRICT OF NEVADA

BY                      DEPUTY

FILED

FEB 20 1998

CLERK, U.S. DISTRICT COURT  
DISTRICT OF NEVADA

BY                      DEPUTY

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

DAYTON FAMILY PRODUCTIONS, INC.,  
et al.,

Defendants.

CV-S-97-00750-PMP (LRL)

~~[proposed]~~ JUDGMENT BY DEFAULT  
AGAINST DEFENDANTS FREDERICK M. DAVIDSON AND RICHARD S. HART

Plaintiff, the Federal Trade Commission ("Commission"), commenced this action by filing its complaint seeking an injunction and other relief against various defendants, including defendant Frederick M. Davidson ("Davidson"), in connection with the operation of an allegedly fraudulent telemarketing business that promoted investments in films produced and/or directed

86

1 by Lyman Dayton. On July 3, 1997, the Commission filed a first amended complaint that named  
2 additional parties, including defendant Richard S. Hart ("Hart"). The amended complaint alleges  
3 that the defendants engaged in unfair or deceptive acts or practices in violation of Section 5 of  
4 the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45, and seeks a permanent  
5 injunction and monetary relief pursuant to Section 13(b) of the FTC Act. Pursuant to Rule 55(a)  
6 of the Federal Rules of Civil Procedure, the Clerk of Court entered a default against defendant  
7 Davidson on September 8, 1997, and against defendant Hart on September 29, 1997. The  
8 Commission now has moved this Court for entry of a judgment by default against defendants  
9 Davidson and Hart, pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure. Having  
10 considered the memorandum and exhibits filed in support of this motion, and all other pleadings  
11 and files in this action, and now being fully advised in the premises, the Court finds:

12 1. This is an action by the Commission instituted under Sections 5 and 13(b) of the  
13 FTC Act, 15 U.S.C. §§ 45 and 53(b), and the Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part  
14 310. The amended complaint seeks both permanent injunctive relief and consumer redress for  
15 alleged unfair or deceptive acts or practices by the defendants in connection with the telephonic  
16 solicitations of investments for films.

17 2. The Commission has the authority under Section 13(b) of the FTC Act to seek the  
18 relief it has requested.

19 3. This Court has jurisdiction over the subject matter of this case, and has  
20 jurisdiction over defendants Hart and Davidson. Venue in the District of Nevada is proper, and  
21 the amended complaint states a claim upon which relief may be granted against defendants Hart  
22 and Davidson under Sections 5 and 13(b) of the FTC Act and under the TSR.

23 4. The activities of defendants Hart and Davidson are in or affecting commerce, as  
24 defined in 15 U.S.C. § 44.

25 5. Defendants Hart and Davidson have failed to answer the amended complaint or  
26 otherwise defend themselves in this action. Accordingly, defendants Hart and Davidson are in

1 default.

2 6. To the best of this Court's information and knowledge, neither defendant Hart nor  
3 defendant Davidson is an infant, neither has been declared incompetent, and neither is currently  
4 in the military or otherwise exempted from default judgment under the Soldiers' and Sailors'  
5 Civil Relief Act of 1940.

6 7. It is proper in this case to issue a permanent injunction prohibiting defendants  
7 Hart and Davidson from engaging in telemarketing or assisting others engaged in telemarketing,  
8 and to prohibit them from making misrepresentations in connection with the advertising,  
9 promotion, marketing or sale of products, services or investments of any kind, and to provide for  
10 monitoring by the Commission of defendants' compliance with such a permanent injunction.

11 8. It is proper in this case to enter a monetary judgment against defendants Hart and  
12 Davidson to redress consumer injury which resulted from violations of the FTC Act by  
13 defendants. The proper measure of consumer injury is the amount of money paid by consumers  
14 to defendants during the times when defendants Hart and Davidson were associated with the  
15 defendants' efforts to raise money from consumers for film partnerships, less the actual cost of  
16 any films made during those respective periods. Redress to consumers is warranted because  
17 defendants' misrepresentations were of a type generally relied upon by consumers.

18 9. This action and the relief awarded herein are in addition to, and not in lieu of,  
19 other remedies as may be provided by law, including both civil and criminal remedies.

20 10. Entry of this Order is in the public interest.

21 IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

22 DEFINITIONS

23 For purposes of this Order, the following definitions shall apply:

24 A. "Telemarketing" shall mean any business activity (whether or not covered by the  
25 TSR and including, but not limited to, initiating or receiving telephone calls, managing others  
26 who initiate or receive telephone calls, operating an enterprise that initiates or receives telephone

1 calls, owning an enterprise that initiates or receives telephone calls, or otherwise participating as  
2 an officer, director, employee or independent contractor in an enterprise that initiates or receives  
3 telephone calls) that involves attempts to induce consumers to purchase any item, good, service,  
4 partnership interest, trust interest or other beneficial interest, to make a charitable contribution, or  
5 to enter a contest for a prize, by means of telephone sales presentations, either exclusively or in  
6 conjunction with the use of other forms of marketing. *Provided* that the term "telemarketing"  
7 shall not include transactions that are not completed until after a face-to-face contact between the  
8 seller or solicitor and the consumers solicited.

9 B. "Assisting others engaged in telemarketing" means knowingly providing any of  
10 the following goods or services to any person or entity engaged in telemarketing: (1) performing  
11 customer service functions for an entity engaged in telemarketing, including, but not limited to,  
12 receiving or responding to consumer complaints; (2) formulating or providing, or arranging for  
13 the formulation or provision of, any telephone sales script or any other marketing material for an  
14 entity engaged in telemarketing; (3) providing names of, or assisting in the generation of,  
15 potential customers for an entity engaged in telemarketing; or (4) performing marketing services  
16 of any kind for an entity engaged in telemarketing.

#### 17 **TELEMARKETING BAN**

18 I. THEREFORE, IT IS HEREBY ORDERED that defendants Hart and Davidson are each  
19 permanently restrained and enjoined from either (1) engaging in telemarketing, or (2) assisting  
20 others engaged in telemarketing.

#### 21 **OTHER CONDUCT PROHIBITIONS**

22 II. IT IS FURTHER ORDERED that defendants Hart and Davidson and their agents,  
23 employees, officers, servants and attorneys, and all other persons or entities in active concert or  
24 participation with any of them who receive actual notice of this order by personal service or  
25 otherwise, in connection with the advertising, promotion, offer for sale, or sale of any item,  
26 product, good, service, or investment interest of any kind, including but not limited to

1 investments in films, are hereby restrained and enjoined from:

2 A. Misrepresenting, directly or by implication, the returns, revenues, or profits that  
3 any film has generated for investors;

4 B. Misrepresenting, directly or by implication, the performance (including gross  
5 revenues generated and box office receipts) of any film;

6 C. Misrepresenting, directly or by implication, the awards received by any film or by  
7 any person who has worked on or been associated with a film;

8 D. Misrepresenting the likely profits to be made through any investment involving  
9 films or any other investment;

10 E. Misrepresenting, directly or by implication, the amount of money or other capital  
11 that will be raised for any investment involving films or any other investment;

12 F. Misrepresenting, directly or by implication, the purposes for which funds raised  
13 from consumers will be used;

14 G. Misrepresenting, directly or by implication, the costs associated with the  
15 advertising, promotion, offer for sale, or sale of any item, product, good, service, or investment,  
16 including but not limited to any investment involving films;

17 H. Misrepresenting, in any manner, directly or by implication, the risk, liquidity,  
18 market value, resale value, or expected income or profit associated with any item, product, good,  
19 service, or investment, including but not limited to any investment involving films;

20 I. Misrepresenting, in any manner, directly or by implication, or failing to disclose  
21 any fact material to a consumer's decision to purchase any item, product, good, service, or  
22 investment, including but not limited to any investment involving films; and

23 J. Conducting or participating in any telemarketing solicitation without compliance  
24 with all applicable federal and state registration and bond requirements.

25 **RECORD KEEPING PROVISIONS**

26 III. IT IS FURTHER ORDERED that, for a period of seven years from the date of entry of

1 this Order, defendants Hart and Davidson and their agents, employees, officers, attorneys,  
2 servants, corporations, successors, and assigns, and those persons in active concert or  
3 participation with them who receive actual notice of this Order by personal service or otherwise,  
4 in connection with any business where

5 (1) that defendant is the majority owner of the business or directly or indirectly  
6 manages or controls the business, and where

7 (2) the business engages in, or assists others engaged in, telemarketing  
8 are hereby restrained and enjoined from failing to create, and from failing to retain for a period of  
9 three years following the date of such creation, unless otherwise specified:

10 A. Books, records and accounts that, in reasonable detail, accurately and fairly reflect  
11 the cost of goods or services sold, revenues generated, and the disbursement of such revenues.

12 B. Records accurately reflecting: the name, address, and telephone number of each  
13 person employed in any capacity by such business, including as an independent contractor; that  
14 person's job title or position; the date upon which the person commenced work; and the date and  
15 reason for the person's termination, if applicable. The businesses subject to this Paragraph shall  
16 retain such records for any terminated employee for a period of two (2) years following the date  
17 of termination.

18 C. Records containing the names, addresses, phone numbers, dollar amounts paid,  
19 quantity of items or services purchased, and description of items or services purchased, for all  
20 consumers to whom such business has sold, invoiced or shipped any goods or services.

21 D. Records that reflect, for every consumer complaint or refund request, whether  
22 received directly or indirectly or through any third party:

23 (1) the consumer's name, address, telephone number and the dollar amount  
24 paid by the consumer;

25 (2) the written complaint or refund request, if any, and the date of the  
26 complaint or refund request;

- (3) the basis of the complaint, including the name of any salesperson complained against, and the nature and result of any investigation conducted concerning any complaint;
- (4) each response and the date of the response;
- (5) any final resolution and the date of the resolution; and
- (6) in the event of a denial of a refund request, the reason for the denial; and

E. Copies of all sales scripts, training packets, advertisements, or other marketing materials utilized.

#### **MONITORING**

IV. IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Order may be monitored:

A. Defendants Hart and Davidson each shall notify the Commission in writing, within ten days of the date of entry of this Order, of his current residential address, mailing address, business and home telephone numbers, and employment status, including the names, telephone numbers, and business addresses of any current employers.

B. For a period of seven years from the date of entry of this Order, defendants Hart and Davidson each shall notify the Commission in writing within 30 days of any changes in his residential or mailing addresses, telephone numbers, or employment status.

C. 180 days after the date of entry of this Order, defendants Hart and Davidson each shall provide a written report to the Commission, sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Order.

This report shall include but not be limited to:

- (1) Defendant's then current residence address and telephone number;
- (2) Defendant's then current employment, business addresses and telephone numbers, a description of the business activities of each such employer, and defendant's title and responsibilities for each employer; and

1 (3) A copy of each acknowledgment of receipt of this Order obtained by defendant  
2 pursuant to Paragraph IX.

3 D. For the purposes of this Order, all written notifications to the Commission shall be  
4 mailed to:

5 Associate Director for Service Industry Practices  
6 Room H-200  
7 Federal Trade Commission  
8 Washington, D.C. 20580

9 Re: ETC v. Dayton Family Productions

10 E. For the purposes of Subparagraphs IV.A and IV.B, "employment" includes the  
11 performance of services as an employee, consultant, or independent contractor; and "employers"  
12 include any entity or individual for whom any individual defendant performs services as an  
13 employee, consultant, or independent contractor.

14 V. IT IS FURTHER ORDERED that the Commission is authorized to monitor defendants'  
15 compliance with this Order by all lawful means, including but not limited to the following  
16 means:

17 A. The Commission is authorized, without further leave of court, to obtain discovery  
18 from any person in the manner provided by Chapter V of the Federal Rules of Civil Procedure,  
19 Fed. R. Civ. P. 26 - 37, including the use of compulsory process pursuant to Fed. R. Civ. P. 45,  
20 for the purpose of monitoring and investigating any defendant's compliance with any provision  
21 of this Order.

22 B. The Commission is authorized to use investigators posing as consumers and  
23 suppliers to either defendant, his employees, or any other entity managed or controlled in whole  
24 or in part by either defendant, without the necessity of identification or prior notice.

25 C. Nothing in this Order shall limit the Commission's lawful use of compulsory  
26 process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to investigate  
whether any defendant has violated any provision of this Order or Section 5 of the FTC Act, 15  
U.S.C. § 45.



1 VI. IT IS FURTHER ORDERED that, for a period of seven years from the date of entry of  
 2 this Order, for the purpose of further determining compliance with this Order, each defendant  
 3 shall permit representatives of the Commission, within three business days of receipt of written  
 4 notice from the Commission:

5 A. Access during normal business hours to any office, or facility storing documents,  
 6 of any business where

7 (1) that defendant is the majority owner of the business or directly or indirectly  
 8 manages or controls the business, and where

9 (2) the business is engaged in, or assists others engaged in, telemarketing.

10 In providing such access, each defendant shall permit representatives of the Commission to  
 11 inspect and copy all documents relevant to any matter contained in this Order; and shall permit  
 12 Commission representatives to remove documents relevant to any matter contained in this Order  
 13 for a period not to exceed five business days so that the documents may be inspected,  
 14 inventoried, and copied.

15 B. To interview the officers, directors, and employees, including all personnel  
 16 involved in responding to consumer complaints or inquiries, and all sales personnel, whether  
 17 designated as employees, consultants, independent contractors or otherwise, of any business to  
 18 which Subsection (A) of this Paragraph applies, concerning matters relating to compliance with  
 19 the terms of this Order. The person interviewed may have counsel present.

20 *Provided* that, upon application of the Commission and for good cause shown, the Court  
 21 may enter an *ex parte* order granting immediate access to defendants' business premises for the  
 22 purposes of inspecting and copying all documents relevant to any matter contained in this Order.

### 23 MONETARY RELIEF

24 VII. IT IS FURTHER ORDERED that judgment is hereby entered against defendant  
 25 Davidson in the amount of SIX MILLION DOLLARS (\$6,000,000) and against defendant Hart  
 26 in the amount of FOUR MILLION NINE HUNDRED THOUSAND DOLLARS (\$4,900,000)

1 for equitable monetary relief, including but not limited to consumer redress, and for paying any  
2 attendant expenses of administering any redress fund. The Commission in its sole discretion  
3 may use a designated agent to administer consumer redress. If the Commission, in its sole  
4 discretion, determines that redress is wholly or partially impractical, any funds not so used shall  
5 be deposited into the United States Treasury as an equitable disgorgement remedy. Defendants  
6 shall have no right to contest the manner of distribution chosen by the Commission or its  
7 designated agent.

#### 8 ORDER DISTRIBUTION

9 VIII. IT IS FURTHER ORDERED that, for a period of seven years from the date of entry of  
10 this Order, defendants Hart and Davidson each shall:

11 A. Provide a copy of this Order to, and obtain a signed and dated acknowledgment of  
12 receipt of same from, each officer or director, each individual serving in a management capacity,  
13 all personnel involved in responding to consumer complaints or inquiries, and all sales personnel,  
14 whether designated as employees, consultants, independent contractors or otherwise,  
15 immediately upon employing or retaining any such persons, for any business where

16 (1) that defendant is the majority owner of the business or directly or indirectly manages  
17 or controls the business, and where

18 (2) the business engages in, or assists others engaged in, telemarketing; and

19 B. Maintain for a period of three years after creation, and upon reasonable notice  
20 make available to representatives of the Commission, the original signed and dated  
21 acknowledgments of the receipt of copies of this Order, as required in Subparagraph A of this  
22 Paragraph.

#### 23 LISTS

24 IX. IT IS FURTHER ORDERED that defendants Hart and Davidson and their officers,  
25 agents, servants, employees, and attorneys, and all other persons or entities in active concert or  
26 participation with them who receive actual notice of this Order by personal service or otherwise,

1 are permanently restrained and enjoined from selling, renting, leasing, transferring, or otherwise  
2 disclosing the name, address, telephone number, credit card number, bank account number,  
3 e-mail address, or other identifying information of any person who paid any money to any  
4 defendant, at any time prior to entry of this Order, in connection with investments involving  
5 films. *Provided* that defendants Hart and Davidson may disclose such identifying information to  
6 a law enforcement agency or as required by any law, regulation, or court order.

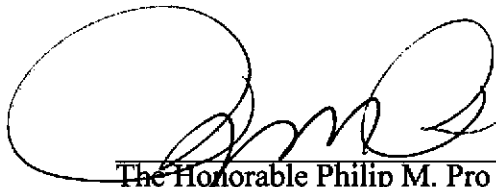
7 **RETENTION OF JURISDICTION**

8 X. IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all  
9 purposes.

10 **ENTRY OF THIS JUDGMENT**

11 XI. IT IS FURTHER ORDERED that there is no just reason for delay of entry of this  
12 judgment, and, pursuant to Fed. R. Civ. P. 54(b), the Clerk shall enter this Order immediately.

13  
14 **IT IS SO ORDERED.**

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16   
The Honorable Philip M. Pro  
United States District Judge

17  
18 Feb 17, 1998  
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CERTIFICATE OF SERVICE

I certify that on February 13, 1998, I served the attached [proposed] JUDGMENT BY DEFAULT AGAINST DEFENDANTS FREDERICK M. DAVIDSON AND RICHARD S. HART by sending copies of the foregoing via first class mail to:

Scott M. Cantor  
Graziadei & Cantor  
302 East Carson Avenue, Suite 400  
Las Vegas, NV 89101

Steven R. Scow  
612 South Seventh Street  
Las Vegas, NV 89101

John V. Spilotro  
624 S. Ninth Street  
Las Vegas, NV 89101

Richard S. Hart  
7340 W. Darby  
Las Vegas, NV 89117

Frederick M. Davidson  
3550 S. Paradise Rd.  
Las Vegas, NV 89109

Executed at Washington, D.C., on February 13, 1998.

  
Gregg Shapiro